

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

**WAHID M. ALAMIIN a/k/a
JAMES SHOCKEY,**

Plaintiff,

v.

**SCOTT CROW,
in his official capacity,**

Defendant.

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Case No. CIV-13-1001-G

ORDER

Now before the Court is a Notice (Doc. No. 249), which was filed by Plaintiff and accompanied by 24 signed subpoena forms.

A. Document Subpoenas

Two of the requested subpoenas request production of documents and answers to various requests. The Court DENIES issuance of such subpoenas as the parties' discovery period has now passed.

B. Trial Subpoenas

The remaining subpoena forms seek the testimony of individuals at Plaintiff's upcoming civil trial. In his Notice, liberally construed, Plaintiff requests that his requested subpoenas be issued by the Court Clerk and served upon their recipients by the United States Marshals Service ("USMS").

1. Issuance

It is unclear from certain of Plaintiff's subpoena requests—even considered in conjunction with the witness list previously filed—what the substance of the relevant witnesses' testimony would be or how such testimony is material to the claims at issue. In light of the special considerations of pro se litigation, the Court declines to allow multiple subpoenas to issue without further direction. **Therefore, if Plaintiff wishes to arrange service of any of his requested subpoenas, he must (in addition to fulfilling the requirements as to costs as outlined below) submit a short statement to the Court of each subpoenaed individual's expected testimony and its relevance to the lawsuit.**

2. Service

a. Federal Rule of Civil Procedure 45(b)(1)

Federal Rule of Civil Procedure 45(b)(1) prescribes that if a subpoena requires that person's attendance, service of that subpoena requires "[t]endering the fees for 1 day's attendance and the mileage allowed by law." Fed. R. Civ. P. 45(b)(1); *see also* 28 U.S.C. § 1821. There is no indication from the record that Plaintiff has sent those funds along with his requests or has arranged for their payment with the Court Clerk. **If Plaintiff wishes to have his subpoenas served, he must send that payment to the Court Clerk for each subpoena, to be transmitted to the USMS along with his service requests.**

b. USMS Fees

The USMS is authorized by federal statute to charge fees for service (including service of subpoenas), and the amount of fees charged is established by federal regulation. *See* 28 U.S.C. § 1921(a)(1)(B); 28 C.F.R. § 0.114. According to the USMS website, unless

a litigant is proceeding *in forma pauperis*, “the USMS must request advance payment of the estimated fees and expenses for service of process.”¹ The USMS is entitled to collect these fees and expenses even where service is attempted but is unsuccessful. 28 C.F.R. § 0.114(f) (“The United States Marshals Service shall collect the fees enumerated in [28 C.F.R. § 0.114(a)], where applicable, even when process i[s] returned to the court or the party unexecuted, as long as service is endeavored.”).

Plaintiff is not proceeding *in forma pauperis*, thus he is not entitled to service by the USMS at no cost. He may arrange for service by the USMS for a fee, however. *See* Fed. R. Civ. P. 4(c)(3). The undersigned will direct the Clerk of Court to assist Plaintiff with any request he makes to the USMS for service of issued subpoenas; however, Plaintiff must be prepared to pay the required fee to the USMS for its efforts. Having been advised of the mandatory fees and expenses, **if Plaintiff wishes to have service completed by the USMS he should complete and return a Form USM-285, along with the proper advance payment, to the Clerk of this Court, for each requested subpoena. If Plaintiff requests the USMS to serve an individual by mail, he must include an \$8.00 advance payment, see 28 C.F.R. § 0.114(a)(2); *Holmes v. United States*, No. CIV-06-796-R, 2008 WL 111320, at *3 (W.D. Okla. Jan. 8, 2008). If Plaintiff requests the USMS to serve an individual personally, he must include a \$65.00 advance payment per subpoena, which will compensate the USMS for one hour of its time. See 28 C.F.R. § 0.114(a)(3). For the latter method of service, Plaintiff also will be liable for payment to the USMS**

¹ Form USM-285, <https://www.usmarshals.gov/process/usm285.pdf>; Instructions for Completing USM-285, <https://www.usmarshals.gov/process/usm285.htm>.

for any time spent in excess of one hour (at a rate of \$65.00 per hour or portion thereof), plus travel costs at \$.21 per mile and any other out-of-pocket expenses. *See id.* § 0.114(a)(3), (b), (c).²

CONCLUSION

ACCORDINGLY, Plaintiff's request to have these subpoenas issued by the Court Clerk and served by the USMS is DENIED. The Court Clerk is directed to hold Plaintiff's remaining 22 subpoena requests in the case file for the present. If Plaintiff wishes to have any of the 22 subpoenas issued and served, he must submit the statement and payments outlined above as soon as possible for each such subpoena. The Court will then consider Plaintiff's requests and determine whether the requested subpoenas should be issued and served.

The Clerk of the Court is directed to send Plaintiff, along with this Order, copies of: (1) Form USM-285; (2) 28 C.F.R. § 0.114; and (3) 28 U.S.C. §§ 1821, 1921.

IT IS SO ORDERED this 29th day of July, 2019.



CHARLES B. GOODWIN
United States District Judge

² The Court has not been asked, and makes no finding here, as to whether any particular method of service would allow the person subject to the subpoena "a reasonable time to comply" or otherwise comport with applicable Rules. Fed. R. Civ. P. 45(d)(3)(A).